

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD V. STOKAN,

Plaintiff-Appellee,

v

HURON COUNTY,

Defendant-Appellant.

UNPUBLISHED

April 10, 2008

No. 274349

Huron Circuit Court

LC No. 99-000732-CK

Before: Murray, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

This case is back before us after our Supreme Court's remand to the circuit court. *Stokan v Huron Co*, 474 Mich 919; 705 NW2d 346 (2005) (*Stokan II*). The case arises out of plaintiff's claims against defendant for breach of contract, promissory estoppel, and declaratory relief. We affirm.

In the prior consolidated appeal, this Court affirmed the circuit court's denial of plaintiff's motion in limine, grant of partial summary disposition to plaintiff, entry of judgment in favor of plaintiff, and denial of defendant's motion to set aside the judgment. *Stokan v Huron Co*, unpublished per curiam opinion of the Court of Appeals, issued July 8, 2004 (Docket Nos. 242645 and 243489), rev'd 474 Mich 919 (2005). Defendant filed an application for leave to appeal with our Supreme Court, and on November 10, 2005, the Supreme Court entered a peremptory order reversing this Court's decision and remanding to the circuit court to reconsider the issue of case evaluation sanctions and to enter judgment in favor of defendant. *Stokan II*, *supra*. Thereafter, defendant motioned for entry of judgment and filed a renewed motion for case evaluation sanctions in the circuit court. The court adopted defendant's proposed entry of judgment, but struck the portion granting defendant monetary relief from the premiums defendant paid to plaintiff prior to judgment. The court denied defendant's motion for reconsideration, reasoning that defendant never filed a counterclaim and was never entitled to a money judgment. The trial court also denied defendant's renewed request for sanctions.

Defendant first argues that the circuit court erred in denying its motion for case evaluation sanctions under MCR 2.403(O). We disagree. Case evaluation sanctions place the burden of litigation costs upon the party that insists upon a trial by rejecting an evaluation award. See *Allard v State Farm Ins Co*, 271 Mich App 394, 398; 722 NW2d 268 (2006). MCR 2.403(O) states in part as follows:

(1) If a party has rejected an evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. . . .

(2) For purposes of this rule "verdict" includes,

(a) a jury verdict,

(b) a judgment by the court after a nonjury trial,

(c) a judgment entered as a result of a ruling on a motion after rejection of the case evaluation.

Under this rule, a verdict "is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation." MCR 2.403(O)(3). A party must file a request for costs within 28 days after entry of "judgment, or entry of an order denying a timely motion . . . to set aside the judgment." MCR 2.403(O)(8).

Plaintiff rejected the case evaluation award of \$40,000 for all "past, present, and future claims." Thereafter, on April 25, 2002, the court entered a judgment awarding plaintiff that amount plus interest and costs totaling \$18,206, and incorporating the relevant portions of its order requiring specific performance for future insurance coverage. Defendant timely filed a motion to set aside the judgment and the court denied that motion on July 1, 2002. Subsequently, defendant filed a motion for case evaluation sanctions on July 17, 2002.

Defendant asserts it timely filed its motion for case evaluations under MCR 2.403(O)(8) because it was filed 18 days after the motion to set aside the judgment. However, the court reasoned that defendant's motion to set aside the judgment was really a motion filed pursuant to MCR 2.602 regarding the manner of entry of judgment. For this reason, the court found that defendant did not meet the timing requirements of MCR 2.403(O)(8). The record shows defendant's motion was based on improper notification under MCR 2.602 and for that reason defendant claimed it was not able to make a timely appeal. Therefore, the court did not abuse its discretion when it denied defendant sanctions because defendant's motion did not meet the timing requirements of MCR 2.403(O)(8). See *Haliw v Sterling Heights (On Remand)*, 266 Mich App 444, 446; 702 NW2d 637 (2005).¹

Defendant also argues that the trial court erred in omitting that portion of defendant's proposed order allocating defendant the monies it paid for plaintiff's health insurance. Defendant cites no authority in support of this argument. "A party may not merely announce a position and leave it to this Court to discover and rationalize the basis for the claim." *Nat'l Waterworks, Inc v Int'l Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007). In any event, we conclude that the rationale advanced by the circuit court in support of its decision to strike the language is sound. Generally, if an order reverses a judgment but does not

¹ Because the circuit court properly rejected the motion for case evaluation sanctions under MCR 2.403(O)(8), we need not address the alternative grounds cited by the court. We note, however, that the court also properly rejected the motion under MCR 2.403(O)(5) and (O)(11).

contain an order of restitution, the appropriate means of recovery is another action for recovery. The Supreme Court's peremptory order did not grant defendant restitution for the monies it paid. Thus, the appropriate avenue for relief is another action for recovery. Accordingly, the court did not abuse its discretion when it denied defendant's motion for reconsideration. See *Moldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Mark J. Cavanagh